

Guidance for Contracts with Management Organizations

Overview

The Minnesota Department of Education (MDE) developed this document to provide charter school boards, charter school leaders and authorizers guidance on developing contracts with management organizations that are in alignment with applicable law and effective national practices. Because charter school contracts with management organizations generally involve extraordinary expenditures and affect all school operations, MDE urges charter school boards to cautiously evaluate such contracts. This document does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. It is not a comprehensive or definitive response to a specific legal situation. Consult with your school's attorney regarding your specific legal situation.

Definitions

For the purpose of this guidance, the definitions of management organizations are provided by the [United States Department of Education](#). Management organizations are identified as charter management organizations (CMO), education management organizations (EMO) or other management organizations (Education SY 2017 - 2018). Specific definitions for each are as follows:

- Charter Management Organization (CMO) – a non-profit organization that operates or manages multiple charter schools linked by centralized support, operations, and oversight.
- Education Management Organization (EMO) – a for-profit entity that contracts with new or existing public school districts, charter school districts, and charter schools to manage charter schools by centralizing support, operations, and oversight.
- Other – an organization that is not a CMO or EMO and that provides management services to one or more charter schools.

Reporting Requirements

[Per Minnesota Statutes, section 124E.16, subdivision 1:](#)

(b) The charter school must submit an audit report to the commissioner and its authorizer annually by December 31.

(c) The charter school, with the assistance of the auditor conducting the audit, must include with the report, as supplemental information: (1) a copy of management agreements with a charter management organization or an educational management organization [....] The agreements must detail the terms of the agreement,

including the services provided and the annual costs for those services. If the entity that provides the professional services to the charter school is exempt from taxation under section 501 of the Internal Revenue Code of 1986, that entity must file with the commissioner by February 15 a copy of the annual return required under section 6033 of the Internal Revenue Code of 1986.

Board of Directors Duties

The charter school's board of directors is responsible for overseeing the affairs of the school, including contracts between management organizations and the school. While charter school administrators may negotiate terms in the contract, the ultimate responsibility and authority for executing the contract remains with the school board. Contracts between the school and management organization must be in writing and be approved and signed by both parties. At minimum, the contract details the terms of the agreement, including the services provided, contractual outcomes, accountability, and the annual costs for those services including any applicable rates.

[Minnesota Statutes, section 124E.07, subdivision 6](#) provides further duties of the charter school board of directors:

The board of directors also shall decide and is responsible for policy matters related to operating the school, including budgeting, curriculum programming, personnel, and operating procedures. The board shall adopt a nepotism policy. The board shall adopt personnel evaluation policies and practices that, at a minimum:

- (1) carry out the school's mission and goals;*
- (2) evaluate how charter contract goals and commitments are executed;*
- (3) evaluate student achievement, postsecondary and workforce readiness, and student engagement and connection goals;*
- (4) establish a teacher evaluation process under section [124E.03, subdivision 2](#), paragraph (h); and*
- (5) provide professional development related to the individual's job responsibilities.*

The board of directors should maintain the primacy of the contract between the charter school and the authorizer over any contract with a management organization or other vendor for services. For example, the board should not enter a contract with a management organization for a term longer than the term of the charter contract with the authorizer. The charter contract may require that any management agreement be subject to review and approval by the charter school authorizer prior to its effective date per the executed contract between the charter school and the authorizer. The authorizer may review the management organization's involvement in the charter school operations, details about the existing relationship between the management organization and charter school board members, and any proposed lease agreement of the charter school facilities with the management organization or any affiliated party.

All loans, grants to, or investments in the charter school by the management organization or any affiliated entity must be evidenced by appropriate documentation and disclosure. Please consider that loans between a management organization and the charter school should be arranged in an agreement separate and distinct from the management contract. Any other agreements between the charter school and the management organization must be fair and reasonable, documented appropriately, align with market rates, and include terms that will not change if the management contract is terminated.

Conflict of Interest

Per [Minnesota Statutes, section 124E.07 subdivision 3\(b\)](#), “An individual is prohibited from serving as a member of the charter school board of directors if [...] the individual, an immediate family member, or the individual's partner is a full or part owner or principal with a for-profit or nonprofit entity or independent contractor with whom the charter school contracts, directly or indirectly, for professional services, goods, or facilities.”

[Minnesota Statutes, section 124E.14](#) states:

(a) No member of the board of directors, employee, officer, or agent of a charter school shall participate in selecting, awarding, or administering a contract if a conflict of interest exists. A conflict exists when:

(1) the board member, employee, officer, or agent;

(2) the immediate family of the board member, employee, officer, or agent;

(3) the partner of the board member, employee, officer, or agent; or

(4) an organization that employs, or is about to employ any individual in clauses (1) to (3), has a financial or other interest in the entity with which the charter school is contracting. A violation of this prohibition renders the contract void.

To protect against conflicts of interest, the charter school board of directors shall:

- Be separate and independent from the management organization.
- Not have members who are principals or employees of the management organization.
- Not have members selected by the management organization.
- Disclose any actual, potential or perceived conflicts of interest to the authorizer in the charter application and in renewal applications for the school and avoid related-party transactions.

Reviewing Management Agreements

CMOs and EMOs are organizations that provide a wide array of support to charter schools. They are procured and approved by the charter school board. To ensure charter schools have effective controls to mitigate financial risks and implement programs in accordance with state and federal requirements and provide accountability over public funds, a charter school board can use the following suggestions when working to establish a contract with a CMO or EMO.

To protect the authority and autonomy of the board, the contract should:

- Be negotiated at arm's length and include reasonable terms.
- Acknowledge the existence of any existing or proposed facility agreement between the charter school board of directors and the management organization or any entity subsidiary to or affiliated with the management organization.
- Detail the terms of the agreement, including the services provided and the annual costs for those services.
- Clearly identify, define and differentiate the role of the board of directors and the management organization in the management and operation of each school facility, and specifically identify the independent authority of the school board and the responsibilities of the school board.
- Include reasonable terms under which each party may terminate the contract. For example, beware of provisions where, if the charter school terminates the contract, the school loses the right to use the school facilities. Losing the school building could put the existence of the school at risk, and takes away the essential autonomy of the school board over management of the school and closure decisions.
- Include provisions that allow for legal, administrative and contractual remedies for breach of contract terms.
- Address any responsibilities the management organization may have in the event of school closure.
- Clearly establish that the charter school board of directors should directly and independently select, retain and pay for its own legal counsel and auditing firm. The U.S. Department of Education Office of Inspector General found it is a significant risk factor and conflict of interest for the charter school and the management organization to use the same auditor or attorney. The school's attorney should be independent and not represent the interests of the management organization.
- Clearly identify, as stated in the [Minnesota Statutes, section 124E.07, subdivision 6](#), that the school board is responsible for all policy matters related to personnel at the school.
- Clearly indicate, per [Minnesota Statutes, section 124E.12](#), employees of the charter school are employees of the school board. Under Minnesota law, the charter school board of directors shall establish qualifications for all persons who hold administrative, supervisory, or instructional leadership roles, and use those qualifications as the basis for job descriptions, hiring and performance evaluations. The charter school board also must employ or contract with all licensed personnel, and may employ unlicensed personnel to perform duties other than teaching, and may contract for other services. The board's ability to exercise programmatic control to comply with federal, state and local laws regarding personnel, e.g., when hiring/terminating, determining staffing levels, and performing staff evaluations, provides assurance that charter schools will implement programs in accord with legal requirements. If the school fails to do so, this would put charter schools at risk of having state aid withheld or having the charter contract terminated. The contract must not contain any provision which conflicts with Minnesota statutory requirements.

To comply with applicable law and educational programming, the contract should:

- Clearly state the requirements, terms and conditions provided by the federal or state funding source to ensure that the management organizations comply with all requirements, terms and conditions provided by the federal or state funding source.
- Clearly state that materials and equipment purchased using federal and state funds are the property of the charter school and not the management organization.

- Provide that all employees of the management organization who have direct, regular contact with students of the charter school shall be subject to criminal background investigations and checks in compliance with applicable laws.
- Meet federal procurement standards of conduct including the Code of Federal Regulations (2 CFR §200.318-326 and 34 CFR 74.40-74.48) if the school anticipates receiving any federal funding. Procurement records must include a basis for contractor selection, and basis for cost.
- Avoid conflicts of interest.
- Indicate charter schools are governed by [Minnesota Statutes, Chapter 13](#) governing government data. All public data must be easily accessible for convenient use. ([Minn. Stat. §13.03, subd. 1](#)). The charter school is also responsible for protecting the rights of subjects of data and appropriately handling non-public, private and confidential data. Therefore, any contracts with management organizations shall ensure that data shall be administered consistent with Chapter 13 and any contracting party must comply with requirements as if it were a government entity. The contract will need to establish a data sharing agreement between the school and the management organization.
- Allow for access to records that are directly pertinent to a specific program receiving government funds, for the purpose of audits, data reporting, and other oversight activities.
- Indicate the charter school will need to directly administer or supervise administration of the federal Charter School Program (CSP) grant. Federal regulations require federal CSP grant recipients to directly administer or supervise administration of federal grants. 34 CFR 75.700-702 and 76.701. This oversight and control cannot be relinquished to a management organization. Additional guidance on factors which demonstrate independent control to directly administer or supervise administration of federal grant awards can be found in US Department of Education Charter Schools Program guidance.
- Follow federal procurement requirements in 7 CFR 211.21 and 2 CFR 200.318 - .326 if the management organization is considered a food service management company (FSMC). A management organization will be considered a FSMC if it manages any aspect of the school meals program. If the management organization does not manage any aspect of meal service, then the charter school board of directors may assign administrative responsibilities to the CMO, such as eligibility, verification and all other activities for which the School Food Authority is responsible, which could include competitively procuring the services of a FSMC.

To protect fiscal transparency and mitigate financial risk, the contract should:

- Clearly identify the charter board of directors as controlling the school's bank account. All payments to the charter school from the State or other grant-making organizations shall be made to an account controlled by the charter school board of directors.
- Clearly specify that the board has the power to review, validate and approve monthly management organization invoices.
- Clearly state that the board of directors will have full access to all financial decisions managed by the management organization for inspection by the charter school board of directors. The practice of requiring that management organizations cannot make expenditure decisions without prior approval by the school board mitigates more risk. Boards must ensure funds are being spent for charter programs that are reasonable, allocable, and allowable.
- Provide that all financial books and records of the charter school held or managed by the management organization shall be available for inspection by the charter school board of directors and the charter school authorizer.
- Require transparent financials even of for-profit EMOs. (Nonprofit CMOs must file IRS Form 990 which provides fiscal transparency). An independent third party audit is recommended.
- Retain financial authority in the charter school board of directors.

- Retain the board's ability to review, approve or reject decisions made by the management organization, including awarding contracts, making expenditures and personnel decisions. The charter school board must be able to determine whether the management organization complied with laws and regulations to ensure federal funds were properly managed and spent.
- Ensure segregation of duties are maintained at the school and between the school and management organization to reduce risk of error, misuse of funds or fraud. Different people should handle the duties and responsibilities required for various parts of a transaction, i.e., separating authorizing transactions, processing and recording them, reviewing them, and handling assets.
- Identify and clearly state the financial relationship between the school and the management organization, which includes payment for services.
- Clearly state all compensation and payments to be paid by the charter school to the management organization for all services including but not limited to management, administration, licensing, technology, curriculum, performance bonuses, and any other amounts paid to the management organization or any affiliated entity or subcontractor, and shall clearly explain the method for calculating such fees and payments.

Additional Resources for Working with CMO/EMO

- [Internal Controls for Uniform Grant Guidance \(.25 CEU\)](#)
This online presentation will help you understand what is needed to strengthen your organization's internal controls.

References

- U.S. Department of Education. SY 2017 - 2018. "FS196 - Management Organizations Directory File Specifications v14.1." <https://www2.ed.gov/about/inits/ed/edfacts/eden/non-xml/fs196-14-1.docx>.
- U.S. Department of Education. Office of Inspector General. 2016. "Nationwide Assessment of Charter and Education Management Organizations Final Audit Report."
<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=2ahUKEwjs4Kilz53fAhXM5YMKHXbhCfQFjACegQIBxAC&url=https%3A%2F%2Fwww2.ed.gov%2Fabout%2Foffices%2Flist%2Foig%2Fauditreports%2Ffy2016%2Fa02m0012.pdf&usg=AOvVaw1zymudcX5wBv8khBqsn35V>
- U.S. Department of Education. January 2014. "Charter Schools Program: Title V, Part B of the ESEA Nonregulatory Guidance." Item B-13, p. 13.
<https://www2.ed.gov/programs/charter/fy14cspnonregguidance.doc>
- U.S. Department of Education. Charter School Programs State Educational Agencies Grant Legislation, Regulations and Guidance. <https://www2.ed.gov/programs/charter/legislation.html>
- NACSA: <https://www.qualitycharters.org/knowledge-core/keywords/cmo/>

Active Management Organizations in Minnesota

Name of Management Organization	Type of Management Organization	Management Organization Address
Accel Schools	EMO	1650 Tysons Boulevard, Suite 630, McLean VA 22102
Athlos	EMO	918 West. Idaho Street, Boise, ID 83702
Concept Schools	CMO	2250 East. Devon Avenue Street #215, Des Plaines, IL 60018
Connections Academy	EMO	1350 Energy Lane, Suite 230, St. Paul, MN 55108
Distinctive Schools	CMO	910 West Van Buren Street, Suite 315 Chicago, IL 60607
EdVisions Cooperative	Other (Teacher's Cooperative)	111 South Meridian Street, Belle Plaine, MN 56011
HAP, Thrive Education	CMO	1075 Arcade Street. Saint Paul, MN 55106
Harvest Network of Schools	CMO	1300 Olson Memorial Highway, Minneapolis, MN 55401
KIPP	CMO	5034 North Oliver Avenue, Minneapolis, MN 55430
TRUEnorth Education Partners	EMO	222 Hennepin Avenue. #428, Minneapolis, MN 55401